

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 02-0048 MMC

Plaintiff,

**ORDER DENYING DEFENDANT'S  
MOTION TO DISQUALIFY**

v.

MARVIN C. HALE,

Defendant

Before the Court is defendant Marvin C. Hale's "Motion to Disqualify Assigned Judge," filed September 12, 2007. Having considered the papers filed by defendant, the Court rules as follows.

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." 28 U.S.C. § 144. "If the judge to whom a timely motion is directed determines that the accompanying affidavit specifically alleges facts stating grounds for recusal under section 144, the legal sufficiency of the affidavit has been established, and the motion must be referred to another judge for a determination of its merits." United States v. Sibla, 624 F. 2d 864, 867 (9<sup>th</sup> Cir. 1980). "An affidavit filed pursuant to [§ 144] is not legally sufficient," however,

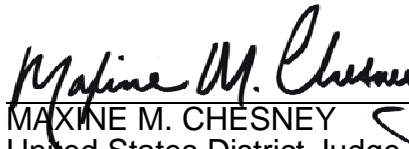
1 unless it “specifically alleges facts that fairly support the contention that the judge exhibits  
2 bias or prejudice directed toward a party stemming from an extrajudicial source.” Id. at  
3 868.

4 Here, the declaration submitted by defendant in support of the instant motion is  
5 conclusory in nature. To the extent any facts are set forth in the motion or the supporting  
6 declaration, such facts pertain only to disagreement with the Court’s rulings in the instant  
7 matter. Consequently, defendant having failed to allege any facts stating grounds for  
8 recusal under § 144 or otherwise, the Court finds the affidavit is not legally sufficient. See  
9 id.

10 Accordingly, the motion is hereby DENIED.

11 **IT IS SO ORDERED.**

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13 Dated: September 14, 2007

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15 MAXINE M. CHESNEY  
16 United States District Judge  
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